

# Decision Notice



Decision 041/2011 Ms N and Shetland Islands Council

General Teaching Council Registration

Reference No: 201001719

Decision Date: 3 March 2011

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**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## Summary

Ms N requested from Shetland Islands Council (the Council) information relative to her General Teaching Council registration. The Council responded by providing some explanation in response to the points she had raised. Following a review, Ms N remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had partially failed to deal with Ms N's request for information in accordance with Part 1 of FOISA. Whilst satisfied that Ms N had been provided with all relevant information held by the Council, he found that the Council had failed to respond to her request for review within the required period of 20 working days. He did not require the Council to take any action.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1)(a) (Time for compliance) and 21(1) (Review by Scottish public authority)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

## Background

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1. Ms N was in correspondence with the Council in relation to her registration with the General Teaching Council for Scotland (GTCS), in the course of which she was informed that an anomaly had been identified.
2. On 26 March 2010, Ms N wrote to the Council in connection with the previous correspondence requesting the following information:
  - a. What was the possible "anomaly" that necessitated alerting the GTCS?
  - b. Who brought this "anomaly" to your attention?
  - c. Why did you, or an appropriate officer of the Schools Service, not simply ask me for a copy of my profile?
  - d. Was this course of action discussed with and approved by your line manager?



- e. How many other possible anomalies did you find and report to the GTCS when you were checking the registration status of all Shetland's teachers?
  - f. When was the possible anomaly identified?
  - g. Did you make any attempt to check the possible anomaly with the school or the DSMO concerned?
  - h. When did you alert the GTCS?
3. The Council responded on 31 March 2010, explaining that the possibly anomaly in the registration had come to the attention of a named Council employee in the course of a particular task, and that employee had contacted the GTCS.
  4. On 9 April, and again on 12 April 2010, Ms N wrote to the Council stating she was dissatisfied with the Council's response and seeking further clarification on certain aspects of the request.
  5. On 15 April 2010, the Council responded to Ms N providing further explanation, particularly in relation to point a) in her request.
  6. On 28 April 2010, Ms N wrote to the Council confirming that her request of 26 March 2010 had been a formal request for information and that she believed she should have a response by 29 April 2010.
  7. On 7 May 2010, the Council responded, indicating that it considered its previous letters of 31 March and 15 April 2010 had adequately responded to her request. It asked her to clarify any issues she believed remained outstanding.
  8. On 8 May 2010, Ms N wrote to the Council, explaining why she was dissatisfied with the Council's responses requesting that the Council carry out a review.
  9. On 31 May 2010, Ms N again wrote to the Council, confirming that her letter of 8 May 2010 was a request for review.
  10. On 14 June 2010, the Council wrote to Ms N, explaining that some of the information she had requested could only be supplied to her under a subject access request (made under section 7 of the Data Protection Act 1998 (the DPA)), although other information could be provided under FOISA. Ms N was advised that certain issues raised might more appropriately be taken as complaints and the Council suggested that in the first instance a meeting be arranged to discuss a positive way forward.
  11. After further correspondence between Ms N and the Council, in the course of which Ms N insisted on a response to her requirement for review, on 26 June 2010 the Council responded to that requirement. It stated that some of the information requested was her own personal data and, as disclosure would breach the data protection principles, exempt in terms of section 38 of FOISA. The Council went on, however, to provide Ms N with what it considered to be a full response to her request, on the understanding that certain of the information would not be released to the public under FOISA.



12. On 26 August 2010 Ms N wrote to the Commissioner, stating that she was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
13. The application was validated by establishing that Ms N had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

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14. On 14 October 2010 the investigating officer notified the Council in writing that an application had been received from Ms N, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to provide a copy of the information on which its responses had been based, to describe the steps it had taken to identify all the information falling within the scope of Ms N's request, and to clarify whether or not any information falling within the scope of the request had been withheld.
15. The Council provided a full response, confirming that it had provided Ms N with all the information it held which fell within the scope of her request.
16. The relevant submissions obtained from Ms N and the Council will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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17. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Ms N and the Council and is satisfied that no matter of relevance has been overlooked.
18. In response to the investigating officer, the Council confirmed that it had not withheld any information from Ms N and referred to the previous correspondence which answered Ms N's requests based on the information it held.



19. The Commissioner has considered Ms N's request for information and the responses provided to her by the Council. He has also considered the Council's submissions to the investigating officer and the supporting information provided with those submissions. In the circumstances, the Commissioner is satisfied that the Council provided Ms N with a full response to her request for information based on the information it held. He notes that the Council relied upon section 38(1)(a) of FOISA to withhold certain information, which it classed as Ms N's own personal data. As this information has been provided to Ms N in any event, in terms of section 7 of the DPA rather than under FOISA (and as the Commissioner considers it arguable in any event that all of the information covered by this request is the applicant's own personal data and therefore subject to the exemption in section 38(1)(a)), the Commissioner does not find it necessary to consider this aspect any further.

#### *Technical Issues*

20. The Commissioner will now consider the technical issues raised by Ms N in her application, where she complained about the time taken to respond to her request for information and to her request for review.
21. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
22. The Council indicated that since Ms N was a member of staff it had initially dealt with her request as "business as usual" rather than as a request for information under FOISA. It appears clear from the terms of the request, however, that this was a request for information under FOISA, to which the Council had to respond within 20 working days.
23. Notwithstanding the fact that the Council did not recognise the request as a request in terms of section 1 of FOISA, the Council initially responded on 31 March 2010 and again on 15 April 2010, and therefore complied with the requirements of section 10(1) of FOISA.
24. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject again to exceptions which are not relevant in this case.
25. Ms N's letter of 9 April 2010 could be interpreted as a requirement for review. Her letter of 8 May 2010 was very clearly a requirement for review. The Council did not carry out a review and provide a response until 26 June 2010. Consequently, it failed to comply with section 21(1) of FOISA in dealing with Ms N's requirement for review.



## DECISION

The Commissioner finds that Shetland Islands Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms N.

The Commissioner finds that by providing any information it held and which fell within the scope of her requests, the Council complied with Part 1.

However, the Commissioner also finds that the Council failed to comply with section 21(1) of FOISA in dealing with Ms N's requirement for review within 20 working days. The Commissioner does not require the Council to take any action in respect of this failure in response to Ms N's application.

## Appeal

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Should either Ms N or the Council wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

**Margaret Keyse**  
**Head of Enforcement**  
**3 March 2011**



## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

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- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

##### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

##### 21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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